

CHAPTER 1**(HB 108)**

AN ACT relating to the protection of unborn children and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 507A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) *As used in this chapter:*

- (a) *"Abortion" has the same meaning as in KRS 311.720;***
 - (b) *"Health care provider" has the same meaning as in KRS 304.17A-005; and***
 - (c) *"Unborn child" means a member of the species homo sapiens in utero from conception onward, without regard to age, health, or condition of dependency.***
- (2) *In a prosecution for the death of an unborn child, nothing in this chapter shall apply to acts performed by or at the direction of a health care provider that cause the death of an unborn child if those acts were committed:***
- (a) *During any abortion for which the consent of the pregnant woman has been obtained or for which the consent is implied by law in a medical emergency; or***
 - (b) *As part of or incident to diagnostic testing or therapeutic medical or fertility treatment, provided that the acts were performed with that degree of care and skill which an ordinarily careful, skilled, and prudent health care provider or a person acting under the provider's direction would exercise under the same or similar circumstances.***
- (3) *Nothing in this chapter shall apply to any acts of a pregnant woman that caused the death of her unborn child.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

(1) *A person is guilty of fetal homicide in the first degree when:*

- (a) *With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.020(1)(a), he causes the death of an unborn child; except that in any prosecution, a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of fetal homicide in the second degree or any other crime; or***
 - (b) *Including but not limited to the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he wantonly engages in conduct which creates a grave risk of death to an unborn child and thereby causes the death of an unborn child.***
- (2) *Fetal homicide in the first degree is a capital offense.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of fetal homicide in the second degree when:*
 - (a) *With intent to cause serious physical injury to an unborn child or with the intent necessary to commit an offense under KRS 507.030(1)(a), he causes the death of an unborn child; or*
 - (b) *With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.030(1)(b), he causes the death of an unborn child under circumstances which do not constitute fetal homicide in the first degree because he acts under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of Section 2 of this Act.*
- (2) *Fetal homicide in the second degree is a Class B felony.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of fetal homicide in the third degree when he wantonly causes the death of an unborn child, including but not limited to situations where the death results from the person's operation of a motor vehicle.*
- (2) *Fetal homicide in the third degree is a Class C felony.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of fetal homicide in the fourth degree when, with recklessness, he causes the death of an unborn child.*
- (2) *Fetal homicide in the fourth degree is a Class D felony.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

The death of an unborn child shall not result in the imposition of a sentence of death, either as a result of the violation of Section 2 of this Act or as a result of the aggravation of another capital offense under KRS 532.025(2).

Section 7. Whereas current criminal law leaves unborn children outside of its coverage, and unborn children are in dire need of that coverage, an emergency is declared to exist and this Act shall take effect upon signature of the Governor or upon its otherwise becoming law.

Approved February 20, 2004